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THE CITY OF NEW YORK  
LAW DEPARTMENT  
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NEW YORK, NY 10007

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January 10, 2008

**BY FAX**

Honorable P. Kevin Castel  
United States District Judge  
United States Courthouse  
Southern District of New York  
500 Pearl Street, Room 2260  
New York, New York 10007

Re: John Fuller v. City of New York, et al.  
07 CV 11462 (PKC)(HBP)

Your Honor:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department and the attorney assigned to represent defendant City of New York ("City") in this matter. I write to respectfully request: 1) an enlargement of time from today, until March 10, 2008, for the City to answer or otherwise respond to the complaint;<sup>1</sup> and 2) an adjournment of the initial pre-trial conference presently scheduled for February 15, 2008, until some time after the City has responded to the complaint. Plaintiff's counsel consents to this application.

In the complaint, plaintiff alleges, *inter alia*, that on April 13, 2006, he was falsely arrested and subjected to excessive force by officers of the New York City Police Department. Plaintiff further alleges that he was ultimately acquitted of the charges against him.

There are several reasons for seeking an enlargement of time. First, in accordance with this office's obligations under Rule 11 of the Federal Rules of Civil Procedure, we need this additional time to investigate the allegations of the complaint. Therefore, this office will be

<sup>1</sup> The undersigned apologizes for the untimeliness of this application. However, the undersigned was only assigned this case today.

*Time to respond to complaint extended to March 10, 2008*  
*Initial pretrial conference adjourned from Feb 15 to March 14, 2008 at 10:00am*  
*SO ORDERED - [Signature] JSDT 1-11-08*

forwarding to plaintiff for execution a release for his medical records. The City cannot obtain these records without the release, and without the records, the City cannot properly assess this case or respond to the complaint. Additionally, as the complaint indicates that plaintiff was acquitted of the charges, this office will be forwarding to plaintiff for execution a consent to the designation of the Corporation Counsel as plaintiff's agent for release of records sealed pursuant to New York Criminal Procedure Law §160.50. Pursuant to that statute, all official records concerning plaintiff's arrest and/or prosecution, including police records, are sealed. This office cannot obtain these records without the designation, and without the records, we cannot properly assess this case or respond to the complaint.

Second, defendant City appears to have been served with process. However, upon information and belief, the individually named defendants have not yet been served. The extension should allow time for plaintiff to serve these defendants with process and for this office to confirm the validity of the purported service, and to determine, pursuant to Section 50-k of the New York General Municipal Law, and based on a review of the facts of the case, whether we may represent them. See Mercurio v. The City of New York, et al., 758 F.2d 862, 864-65 (2d Cir. 1985) (quoting Williams v. City of New York, et al., 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (decision whether to represent individual defendants is made by the Corporation Counsel as set forth in state law)).

Further, should the Court grant the instant application, defendant City respectfully requests that the initial pre-trial conference presently scheduled for February 15, 2008, at 11:30 a.m., be adjourned to a date and time convenient for the Court after March 10, 2008.

No previous request for an extension has been made. Accordingly, we respectfully request that the City's time to answer or otherwise respond to the complaint be extended to March 10, 2008 and that the initial pre-trial conference be adjourned to a date after March 10, 2008, and for such other relief as Your Honor deems just and proper.

Thank you for your consideration of this request.

Respectfully submitted,

  
Gabriel P. Harvis (GH2772)  
Assistant Corporation Counsel

cc: Richard Cardinale, Esq. (by Fax)